

**MINUTES OF THE
NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENT
INTERIM COMMITTEE**

Wednesday, October 18, 2000 - 9:00 a.m. - Room 303 State Capitol

Members Present:

Sen. Howard C. Nielson, Senate Chair
Rep. Bradley T. Johnson, House Chair
Sen. Beverly Ann Evans
Sen. Joseph L. Hull
Sen. Millie M. Peterson
Rep. Eli H. Anderson
Rep. Craig W. Buttars
Rep. Mary Carlson
Rep. David N. Cox
Rep. Fred J. Fife, III
Rep. James R. Gowans
Rep. Keele Johnson
Rep. Evan L. Olsen
Rep. Morgan Philpot
Rep. Matt Throckmorton

Members Excused:

Sen. Leonard M. Blackham
Rep. Tom Hatch
Rep. Jordan Tanner

Members Absent:

Rep. Bill Wright

Staff Present:

Ms. Constance C. Steffen,
Research Analyst
Ms. Jeanenne B. Larson,
Associate General Counsel
Ms. Joy L. Miller,
Legislative Secretary

Note: A list of others present and a copy of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. Chairman Johnson called the meeting to order at 9:15 a.m. He introduced Rep. Morgan Philpot who is replacing Rep. Mel Brown.

MOTION: Sen. Peterson moved to approve the minutes of August 16, 2000. The motion passed unanimously. Sen. Hull and Reps. Buttars, K. Johnson, and Throckmorton were absent for the vote.

2. Replacement of Water Affected by Mining - Mr. Eugene Johansen, Emery County Water District, outlined the details which led to litigation between the state agencies managing mining interests and the water users of Emery County. He explained that last year 89 percent of the coal mined in the state came from the Emery County watershed. According to records they have obtained, there is being discharged from those mines 9,616 acre feet of water that is not accounted for or considered part of the water use amounts of the state. He noted the state engineer is responsible for the general administration, supervision, measuring, apportionment, and distribution of surface and underground water. The Division of Oil, Gas and Mining (DOGM) should hold the mining industry accountable for any interference with water. He expressed interest in having an advocate on the Board of Oil, Gas and Mining.

Commissioner Hatch requested the state to clarify the roles and responsibilities of DOGM and the state engineer. The mining industry provides the baseline hydrology and monitoring plan for the mines, but then it falls back to the local people to prove that the water from the surface was diminished or interrupted.

Mr. Lowell Braxton, DOGM, explained the mining industry monitors springs and stream flows at several hundred points as required by the permits issued by the division. As part of the permit process, two water analyses and public comment periods, as well as a review by the state engineer's office, are required. The division receives a fair amount of detail on the potential impacts of mining on the water supply and on the hydrologic balance.

Mr. Tom Bingham, Utah Mining Association, explained they objected to the litigation settlement agreement and asked the board to reject it, because the water users asserted their requested rule changes were nonsubstantial and were not subject to public hearing. In that circumstance, the association would not have the opportunity to respond.

Mr. Fred Payne, Payne Land Services, stressed the need to decide if changes should be addressed in rulemaking or in the code itself.

Mr. Bob Morgan, state engineer, indicated in the case of mining, DOGM has authority over water. He said his office reviews mining reclamation plans for their impacts on the hydrologic environment. Mr. Morgan stated his agency could serve as a third party under existing statutes. He noted that under mining law water encountered during the mining process can be used for that mining process.

Commissioner Kent Peterson, Emery County Commission, indicated one of the problems they have had is identifying the data collected. He encouraged all those involved to work together to resolve the problem in a timely manner.

3. Consider Proposed Legislation, "Certification and Training for Underground Wastewater Disposal System Installers" - Mr. Brent Bradford, Department of Environmental Quality, explained the proposed bill would require certification for individuals who design, install, inspect, maintain, or conduct percolation tests or soils tests for underground wastewater disposal systems. A fee on new underground wastewater disposal systems would be imposed. The bill would also create the Underground Wastewater Disposal System Restricted Account.

Mr. Don Ostler, Department of Environmental Quality, noted there are many underground wastewater disposal systems in the state that do not meet current design requirements.

Mr. Phil Wright, Wasatch County Health Department, said the certification and training will assist health departments, engineers, designers, and installers to make sure the systems function properly.

MOTION: Sen. Hull moved to adopt the legislation as a committee bill with the following amendment: Line 181: After "certification" insert "and recertification"

SUBSTITUTE MOTION: Rep. Carlson moved the bill be held until the next meeting and that the committee proceed to the next item on the agenda. The motion passed unanimously. Sen. Hull was absent for the vote.

4. Sunset Review - Lead Acid Battery Program -

MOTION: Sen. Peterson moved to reauthorize the Lead Acid Battery Program for an additional five years. The motion passed unanimously. Sen. Evans was absent for the vote.

5. Cultural Resource Protection -

a. School and Institutional Trust Lands - Mr. Kevin Carter, School and Institutional Trust Lands Administration (SITLA), testified SITLA has expended a great deal of money during the last three fiscal years for cultural resource protection. It has also surveyed and cleared many acres. He indicated that as a sale of trust lands is closed, a fee is collected to recover some expenses. The total amount recovered has been approximately 20 percent of program costs. Several months ago SITLA met with its Board of Trustees and discussed alternatives to the current program. He reviewed the alternatives with the committee. Mr. Carter indicated the legislative direction SITLA has been given draws a very fine line between the competing interests of the general public and the trust land beneficiaries. He asserted SITLA appropriately treads that line with the procedures currently in place.

Members of the committee expressed concern that what is being done with the trust lands is maximizing the return but may not be doing what is best for the land over the long term.

b. State Historic Preservation Office Role in Federal Projects - Mr. Max Evans, Division of State History, distributed a document summarizing the state's participation in the federal historic preservation process and the role of the State Historic Preservation Office (SHPO). The SHPO reflects the interest of the state and its citizens in the preservation of their cultural heritage and advises and assists federal agencies in carrying out their responsibilities. Mr. Evans pointed out that the federal agencies are the decision-makers. It is the state's role to consult in order to facilitate the process.

Mr. Wilson Martin, Division of State History, explained they handle over 3,000 cases per year. He said the division's goal is to facilitate the federal historic preservation process in a manner that allows the proposed project to proceed.

6. Progress Report on Rulemaking on Sensitive Species and Critical Habitat - Mr. John Davis, Pruitt, Gushee and Bachtell, explained that in August cooperative rulemaking began to address serious questions the oil and gas industry is facing with the state's designation of sensitive species and critical habitat. He reported that significant progress has been made in obtaining a workable rule on sensitive species. He said there is still a fair amount of work to do on wildlife habitat designation.

Mr. John Kimball, Division of Wildlife Resources, explained the division's responsibilities in enforcing the policies of the Wildlife Board. He said the process they are following does not compromise the agency's ability to get the facts. It makes more public the process of how they bring the information forward.

7. Eminent Domain Reform - Mr. Craig Call, Private Property Ombudsman, distributed a draft booklet to be given to owners of property that may be acquired by a government agency. The booklet summarizes rights of property owners prior to condemnation action against them.

Mr. John Njord, Department of Transportation, said the department is encouraged by the booklet and will continue to participate in making refinements to it and will provide information to property owners as property is acquired.

Mr. Craig Hall, South Salt Lake attorney, stated the municipalities are pleased with the effort. He has found that disclosure to property owners and working with them pays dividends in the long run. The booklet will serve to reassure property owners that government is not attempting to take anything from them without fair compensation.

MOTION: Sen. Nielson moved to endorse the private property rights booklet. The motion passed unanimously. Reps. Buttars, Carlson, Philpot, and Throckmorton were absent for the vote.

MOTION: Sen. Peterson moved to adjourn the meeting at 12:10 p.m. The motion passed unanimously.